

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INFORMATION BUILDERS, INC.,

Plaintiff,

-against-

EMERGENCY RECOVERY, INC.,

Defendant.

No. 17 Civ. _____

(Judge _____)

COMPLAINT

Plaintiff, Information Builders, Inc. ("IBI"), by its attorneys, Labaton Sucharow LLP, for its Complaint herein alleges:

Preliminary Statement

1. This is an action to recover fees due to plaintiff for the licensing of software and professional services rendered, pursuant to a Master Software License (and Riders thereto) and a Master Services Agreement (and Statements of Work issued pursuant thereto).

Jurisdiction and Venue

2. Jurisdiction of this action is founded upon diversity of citizenship as set forth in 28 U.S.C. §1332.

3. Plaintiff, Information Builders, Inc. ("IBI"), is a New York corporation with its principal place of business at 2 Penn Plaza, New York, NY 10121-2898.

4. Defendant, Emergency Recovery, Inc. ("ERI") is a Florida corporation with its principal place of business at 4611 Johnson Road, Coconut Creek, FL 33073.

5. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue over this action is proper in the Southern District of New York under 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to the claim occurred in

the Southern District of New York. In addition, the Master Software License Agreement and Master Services Agreement each expressly provide that any action shall be brought in a federal or state court located in County, City, and State of New York, and in no other forum.

FIRST COUNT

Breach of the Master Software License Agreement

7. IBI and ERI are parties to a Master Software License Agreement dated 12/30/2015 and Riders thereto dated January 20, 2016 and March 25, 2016, copies of which are annexed hereto as Exhibit A. Each Rider expressly provides that it is “non-cancelable” during the specified term.

8. The January 20, 2016 Rider is for a term of 36 months, commencing 12/31/15, and ending December 30, 2018, and provides for monthly payments in the sum of \$28,273 for licensing fees and technical support.

9. The March 25, 2016 Rider is for a term commencing March 31, 2016, and ending December 30, 2018, and provides for monthly payments of \$3,964.55 for licensing fees.

10. Pursuant to the terms of the Master Software License Agreement, IBI is entitled to a late fee of 1.5% per month for payments due more than 30 days from the date of the invoice.

11. IBI has duly performed and fulfilled all of its obligations pursuant to the Master Software License Agreement and Riders.

12. ERI has failed and neglected to make payments due for licensing fees and technical support as required by the Master Software License Agreement and Riders in the total sum of \$302,031.60, through February 2017, which were invoiced to it as set forth on Exhibit B hereto.

13. Accordingly, IBI is entitled to Judgement against ERI in the sum of \$302,031.60, plus interest at 1.5% per month on each outstanding balance commencing 30 days after invoice date.

14. IBI also is entitled to, and requests, judgment declaring that ERI is obligated to make all future payments due under the January 20, 2016 Rider and the March 25, 2016 Rider for the period commencing March 1, 2017 and ending December 30, 2018, in the total sum of \$709,226.10, at the rate of \$32,237.55 per month.

SECOND COUNT

Breach of the Master Services Agreement

15. IBI and ERI are parties to a Master Services Agreement dated January 1, 2016 and Statements of Work issued pursuant thereto dated March 7, 2016 and March 31, 2016, copies of which are annexed as Exhibit C.

16. IBI has duly performed and fulfilled all of its obligations pursuant to the Master Services Agreement and Statements of Work and has rendered services pursuant thereto and incurred out of pocket expenses in the total sum of \$478, 592.01, which were invoiced to ERI as set forth on Exhibit D.

17. Pursuant to the terms of the Master Services Agreement and Statements of Work, invoices are due upon receipt.

18. ERI has failed and neglected to pay any of such invoices.

19. According, ERI is liable to IBI in the sum of \$478,592.01, plus interest.

THIRD COUNT

Quantum Meruit

20. Between on or about February 10, 2016 and on or about July 22, 2016 IBI, at the special instance and request of ERI, rendered professional services and incurred expenses in the total amount of \$478,592.01, no part of which has been paid although payment has been duly demanded, as set forth on Exhibit D.

21. Accordingly, ERI is indebted to IBI in the sum of \$478,592.01, plus interest.

WHEREFORE, IBI requests judgment against ERI:

- (a) Upon the First Count in the sum of \$302,031.60, with interest at the rate of 1.5% per month upon each payment due commencing 30 days from the date of invoice or at such other rate as the Court deems appropriate ;
- (b) Upon the First Count declaring the ERI is required to make all future payments due pursuant to the Master Software License Agreement and Riders through 12/30/2018 in the total sum of \$709,226.10, at the rate of \$32,237.55 per month, commencing March 1, 2017;
- (c) Upon the Second Count, in the sum of \$478,592.01, plus interest;
- (d) Upon the Third Count, in the sum of \$478,592.01, plus interest; and
- (d) Upon all Counts, for costs and disbursements.

Dated: February 16, 2017

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